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Lawrence Brook Watershed Partnership
Lower Raritan Watershed Partnership

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IN THE MATTER OF THE TOWNSHIP OF : SUPERIOR COURT OF NEW JERSEY
EAST BRUNSWICK FOR A JUDGMENT OF : APPELLATE DIVISION
COMPLIANCE OF ITS THIRD ROUND : DOCKET NO. A-3115-19
HOUSING ELEMENT AND FAIR SHARE : A-3125-19
PLAN. :
: On appeal from Final
X Judgment Entered in
: Law Division of
HIDDEN OAK WOODS, LLC, : Middlesex County
:
Plaintiff/Respondent, : Docket No. L-4013-15
: Docket No. L-4282-19
:
-vs.- : Sat Below:
: Hon. Thomas McCloskey,
TOWNSHIP OF EAST BRUNSWICK and : J.S.C.
TOWNSHIP OF EAST BRUNSWICK :
PLANNING BOARD, : Civil Action
: (Consolidated)
Defendants/Appellants. :
_____ X

CERTIFICATION OF RENÉE STEINHAGEN IN SUPPORT
OF MOTION FOR LEAVE TO APPEAR AS AMICI

I, RENÉE STEINHAGEN, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and Executive Director of New Jersey Appleseed Public Interest Law Center, attorney for *amici curiae* applicants Lawrence Brook

Watershed Partnership, Inc. ("LBWP") and Lower Raritan Watershed Partnership ("LRWP") in connection with this matter. I make this certification in support of applicants' motion, pursuant to R. 1:13-9, for leave to appear as *amici curiae* in this matter and to submit a brief in support of Appellants' appeal and in opposition to the decision below reversing the Planning Board's decision to deny Respondent's development application for its refusal to secure a valid Wetlands Letter of Interpretation ("LOI").

2. The applicants are two local environmental nonprofit organizations that are dedicated, as part of their respective missions, to restoring, enhancing and conserving the natural resources of their shared "Watershed Management" area in Middlesex County. Each of the applicants has a special interest in this litigation. They both participated in the Planning Board hearings held in this matter, requested the Planning Board to require the developer to secure an updated wetlands delineation of the 42-acre "Hidden Oak Woods" development site, and sought to secure changes to the project that would ensure a safe, healthy environment for future residents as well as cause minimum negative impact on the soils, hydrology and plants of this distinct geographical area.

3. Since 1998, LBWP has been vigorously committed to advocacy, water monitoring, community action and environmental education programs related to the Lawrence Brook Watershed. Its mission is specifically to protect the environment and enhance the water

quality throughout this area. It achieves this mission by 1) studying and characterizing the Lawrence Brook Watershed, including its water quality; 2) organizing and participating in activities for the public, including litter clean-ups and outdoor activities such as nature walks and bicycle rides; 3) educating its membership and the general public on environmental issues and offering informative programs and presentations to other community groups; 4) communicating and collaborating with environmental commissions within the watershed; 5) networking with other environmental groups and government agencies; and 6) reviewing and assessing local, county, and state development plans in the watershed area as a basis for advocacy.

4. Alan S. Godber, President of LBWP, submitted a letter dated December 29, 2018, to the East Brunswick Planning Board setting forth the organization's concerns regarding the proposed residential development, and he spoke directly to the Board at the February 13, 2018, hearing. (5T163-19 to 5T166-20). The letter, attached hereto as Exhibit A, ended by urging the Board to consider several other sites in the Township that are "more suitable for residential development and affordable housing needs" than the subject parcel, which LBWP feared would be subject to unnecessary "habitat destruction."

5. The LRWP works to conserve, enhance and restore the natural resources of New Jersey Watershed Management Area 9, the Lower

Raritan Watershed. Organized in 2014 to address industrial pollutants that left a legacy of contamination in the Raritan River and the Lower Raritan Watershed, it has since identified other ongoing threats to the watershed, including the expansion of impervious surfaces, significant non-point pollution related to stormwater flows and stream degradation related to up-slope development. In 2017, LRWP worked with a student at Rutgers University to develop documents to guide restoration of the East Brunswick Tices Lane Park Pinelands area, which included, among other things, an effort to establish baseline information to understand stream degradation of the Sawmill Brook from up-slope development. LRWP is currently in the process of documenting changes in the percent of impervious surface in East Brunswick over time (see Maps from 1995-2015 attached hereto as Exhibit B), and notes the recommendation by a Rutgers University Report that impervious cover within the Lawrence Brook sub-watershed should be reduced by 183.4 acres. See

http://water.rutgers.edu/Projects/NFWF/ICA/ICA_EastBrunswick.pdf

6. Heather Fenyk, AICP/PP, Founder and President of LRWP, submitted a letter dated October 8, 2018, to the East Brunswick Planning Board setting forth the organization's concerns regarding the proposed residential development, and she spoke directly to the Board, as part of the objector's case at the February 13, 2018, hearing. (3T16-3T47). The letter is attached

hereto as Exhibit C. In the first line of the letter, Ms. Fenyk requested, on behalf of LRWP, that the developer provide "an updated wetlands delineation of the 45-acre 'Hidden Oak Woods' proposed development site in East Brunswick's historic and environmentally critical Sawmill Brook Basin/Hickory Swamp."

7. As described above, each of the two applicant *amici* has a special interest in this litigation insofar as each seeks to protect the natural resources of specific Watershed Management Areas in Middlesex County. Their respective interests originate from their organizational missions, their tireless advocacy on behalf of the natural resources found in their respective geographical areas, and their dedication of resources toward increasing awareness and public action to protect the water quality as well as the surrounding habitat of the many streams, tributaries, and lakes that serve as the drinking water supply for many Middlesex residents.

8. As a result of their respective missions and activities, LRWP and LBWP are intimately involved in the subject matter of this litigation. In their brief, they intend to defend their respective participation in the hearing, as well as the comments of other objectors, as relevant, credible and within the jurisdiction of the Planning Board; and ask that the Appellate Court not view the Planning Board's policy of permitting members of the public to speak at each hearing on an application as

evidence, in this instance, of anti-affordable housing sentiment in the municipality. They also intend to discuss the reasonableness of the Planning Board's request to require an updated LOI in light of climate change over the past twenty-five years, and will present to the court some of the public health problems that may arise from the proposed development as currently designed.

9. Pursuant to an OPRA request, a member of LBWP secured a copy of a memorandum that was submitted by the East Brunswick Environmental Commission, dated May 18, 2018, revised June 1, 2018, that was submitted to the East Brunswick Planning Board. A true and accurate copy is attached hereto as Exhibit D.

10. Mr. Richard Walling, a former Planning Board member and resident of East Brunswick who observed the site from its boundaries; and, with the assistance of certain members of LRWP and LBWP, he presented an objector's case at the December 5, 2018 planning board hearing. Prior to that time and thereafter, he communicated with Mr. Sachs, the Planning Board attorney, Ms. Zimmerman at the Freehold Soil Conservation District and Mr. Christopher Jones from the Department of Environmental Protection, among others, including a message sent to all Planning Board members regarding the additional 425,000 gallons of water entering at the "Alfieri Site" that were not included in the calculations

presented by the applicant. A true and accurate copy of his emails and responses thereto are attached hereto as Exhibit E.

11. Attached as Exhibit F are true and accurate copies of four maps entitled "NJDEP GIS Data Viewer" that indicate the entire Hidden Oaks site is considered a Critical Environmental Site. Other maps indicate wetlands as of 2012 and habitat status.

12. Attached as Exhibit G are two aerial photographs of the site dated July 12, 2020 and September 20, 2020.

13. Attached as Exhibit H is a true and accurate copy of the Governor's Executive Order No. 89 requiring the development of a Statewide Climate Change Resilience Strategy by September 1, 2020. Such strategy is intended "to promote the long-term mitigation, adaption, and resilience of New Jersey's economy, communities, infrastructure, and natural resources throughout the State in a manner consistent with the Scientific Report on Climate Change."

14. Attached as Exhibit I are the relevant pages from the Redevelopment Agreement between the East Brunswick Redevelopment Agency and River Development Equities, LLC, dated December 17, 2019, and indicating a commitment to build 1,260 market rate units and only 15 affordable units. See <https://re-nj.com/developer-local-officials-offer-vision-for-500-million-project-in-east-brunswick/> for a description of a current redevelopment project that will not increase the impervious surface in East Brunswick.

15. Attached as Exhibit J are the cover, index and relevant page 37 of the East Brunswick Natural Resource Inventory that explains the term "Class A" or "Class B" "Environmentally Sensitive Area."

16. For the foregoing reasons, I respectfully request that this Court grant applicants' motion for leave to appear as *amici curiae* and submit a brief in support of Appellants' appeal. A copy of the proposed brief is attached hereto as Exhibit K.

17. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Renée Steinhagen, Esq.

Dated: December 9, 2020